APPEAL NO. 020584
FILED APRIL 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 26, 2002. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) was 13% as assessed by the designated doctor in an amended report.

The claimant appeals, contending that the "no proper basis existed" for the designated doctor to amend her initial report (assessing an 18% IR). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable low back injury bulging disc with annular tear at L4-5 on _____, and did not have spinal surgery. The parties stipulated that the claimant reached maximum medical improvement (MMI) on the statutory MMI date of March 11, 2001.

The claimant's treating doctor, in a report dated March 1, 2001, assessed a 28% IR based on loss of range of motion (ROM) and anticipated lumbar surgery. (This report also has a prospective MMI date.) The carrier disputed that rating and Dr. G was selected by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor. In a report dated April 27, 2001, Dr. G certified the statutory MMI date and assessed an 18% IR based on 7% impairment from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and 12% impairment for loss of ROM with 0% for motor and sensory deficit. An undated peer review report took issue with Dr. G's ROM measurements and proposed some questions be asked of the designated doctor. That report, with the proposed questions, was sent to the designated doctor by the Commission by letter dated June 29, 2001. Dr. G responded by letter dated August 1, 2001, explaining how she arrived at her ROM figures and concluded stating:

> If insurance carrier did not agree with [IR], patient can be scheduled again to be measured to have another [IR] by his own treating doctor or by me.

The claimant was reexamined by the designated doctor, who in a report dated October 5, 2001, again certified MMI and assessed a 13% IR based on 7% impairment from Table 49 and 6% impairment for ROM (and none for sensory deficit). The hearing officer found that Dr. G had properly utilized AMA Guides methodology in arriving at the 13% IR.

The parties argued the case on the basis whether the amended 13% IR report was done for a proper purpose. The Commission adopted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002. Rule 130.6(i) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." We consider Rule 130.6(i) and Appeal No. 013042-s as dispositive of this case with Dr. G's amended report of a 13% IR having presumptive weight. The hearing officer did not err in giving presumptive weight to the 13% IR in the designated doctor's amended report in accordance with Rule 130.6(i) and Appeal No. 013042-s, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge